UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

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CONSUMER FINANCIAL PROTECTION, BUREAU, *et al.*,

Plaintiffs,

v.

STRATFS, LLC (f/k/a STRATEGIC FINANCIAL SOLUTIONS, LLC), *et al.*,

Defendants, and

STRATEGIC ESOP, *et al.*,

Relief Defendants.

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24-CV-40-EAW-MJR

REPORT AND RECOMMENDATION

Before the Court is relief defendant Jacklyn Blust's motion to dismiss the second amended complaint pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure. (Dkt. No. 454) For the following reasons, it is recommended that the motion to dismiss be denied.

## BACKGROUND

On January 10, 2024, plaintiffs Consumer Financial Protection Bureau ("the CFPB"), the People of the State of New York, by Letitia James, Attorney General of the State of New York, the State of Colorado *ex rel.* Philip J. Weiser, Attorney General, the State of Delaware *ex rel.* Kathleen Jennings, Attorney General, the People of the State of Illinois through Attorney General Kwame Raoul, the State of Minnesota by its Attorney General Keith Ellison, the State of North Carolina *ex rel.* Joshua H. Stein, Attorney General, and the State of Wisconsin (collectively "plaintiffs"), filed a complaint alleging

that defendants were violating the Telemarketing Sales Rule (the "TSR"), 16 C.F.R. pt. 310, which implements the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. §§ 6102(c), 6105(d); New York Executive Law § 63(12); New York General Business Law (GBL) Article 22-A; Wis. Stat. § 218.02; and Wis. Admin. Code § DFI-Bkg ch. 73. (Dkt. No. 1) Defendants named in the complaint included StratFS, LLC and its related entities and affiliates (hereinafter "Strategic") as well as individuals Ryan Sasson and Jason Blust. (*Id.*) The complaint also named a number of relief defendants, including Jacklyn Blust, the wife of Jason Blust, and the Blust Family 2019 Irrevocable Trust (the "Blust Trust").[1] (*Id.*)

Also on January 10, 2024, plaintiffs filed an *ex parte* motion for a temporary restraining order ("TRO") with asset freeze, appointment of a receiver, and other equitable relief, as well as a request for defendants to be ordered to show cause as to why a preliminary injunction should not issue. (Dkt. No. 5) The Honorable Lawrence J. Vilardo granted plaintiffs' request for a TRO on January 11, 2024. (Dkt. No. 12) On February 1 and 2, 2024, this Court held an evidentiary hearing to address plaintiffs' motion for a preliminary injunction. (Dkt. Nos. 129, 130) This Court granted plaintiffs' motion for a preliminary injunction on March 4, 2024 (the "PI").[2] (Dkt. Nos. 183, 184)

Plaintiffs filed an amended complaint on March 27, 2024, which, among other things, added Daniel Blumpkin, Albert Ian Behar, Twist Financial, LLC, Duke Enterprises, LLC, and Blaise Investments, LLC as defendants. (Dkt. No. 249) A second amended

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[1] The complaint does not allege that Jacklyn Blust is married to defendant Jason Blust. But that fact is acknowledged and undisputed by the parties. (Dkt. No. 454-1, pg. 1; Dkt. No. 478, pg. 2)

[2] Defendants appealed this Court's PI order to the Second Circuit Court of Appeals. (Dkt. Nos. 192-93, 198, 203, 206) On June 2, 2025, the Second Circuit affirmed the PI and remanded the case for further proceedings. *See Consumer Fin. Prot. Bureau v. StratFS, LLC,* 24-CV-697, 2025 U.S. App. LEXIS 13336 (2d Cir. June 2, 2025) (summary order); Dkt. No. 750.

complaint, the operative pleading here, was filed on May 28, 2024. (Dkt. No. 366) The second amended complaint ("SAC") added Fidelis Legal Support Services LLC, Lit Def Strategies, LLC ("Lit Def"), Relialit, LLC ("Relialit"), Hedgewick Consulting ("Hedgewick"), Richard Gustafson, Timothy Burnette, and Michelle Gallagher as defendants. (*Id.*) The SAC continues to name, among others, Jacklyn Blust and the Blust Trust as relief defendants. (*Id.*)

## SECOND AMENDED COMPLAINT ALLEGATIONS[3]

Since at least January 2016, through the granting of the TRO on January 11, 2024, the individual and corporate defendants operated an elaborate and complicated scheme to collect exorbitant, illegal advance fees for debt-relief services from consumers facing significant financial difficulty. (Dkt. No. 366, ¶ 13) This scheme violated the TSR, which prohibits a seller or telemarketer from (1) collecting advance fees in exchange for debt-relief services; (2) taking a fee from a consumer that is not proportional to the amount of debt settled or based on a fixed percentage of the amount saved by the consumer; and (3) making any false statements or material representations as to any aspect of a debt-relief service. (*Id.* at ¶¶ 230-89) The scheme also violated various New York and Wisconsin state laws. (*Id.* at ¶¶ 290-315)

In furtherance of this scheme, Strategic engaged in consumer debt settlement and debt litigation together with numerous law firms, in exchange for advance fees (hereinafter referred to as "Strategic's debt-relief services" or "Strategic's debt-relief

[3] The SAC is 87 pages long and extremely detailed. A comprehensive recounting of the allegations and claims in the SAC was provided in this Court's previous Reports and Recommendations addressing motions to dismiss by defendants Jason Blust, Lit Def, Relialit, Hedgewick, Richard Gustafson, Timothy Burnette, Michelle Gallagher, Fidelis Legal Support Services, LLC as well as relief defendants Cameron Christo and the Bush Lake Trust. (Dkt. Nos. 532, 715) In the instant Report and Recommendation, the Court recounts only those allegations relevant to relief defendant Jacklyn Blust's motion to dismiss. For purposes of evaluating the motion to dismiss, the Court accepts all facts in the SAC as true.

operation"). (*Id.* at ¶ 26, ¶ 45, ¶ 47, ¶ 83, ¶¶ 106-07) When enrolling in Strategic's debt-relief services, consumers were promised that attorneys would negotiate with creditors on their behalf to settle their debts and would provide a legal defense in the event they were sued by creditors for non-payment of their debts. (*Id.* ¶ 18, ¶ 26, ¶ 110) However, in reality, the law firms performed little to no work on behalf of consumers and instead acted as facades for Strategic's debt-relief operation. (*Id.* at ¶ 26, ¶ 43, ¶ 120) In addition, the law firms almost never represented consumers when they were sued by creditors, even though they paid significant retainers and legal fees. (*Id.* at ¶ 95, ¶ 122, ¶ 174)

Defendant Jason Blust controlled the law firms. (*Id.* at ¶¶ 83-84, ¶ 187, ¶¶ 191-92) Blust also owned and controlled defendants Hedgewick, Relialit, and Lit Def. (*Id.* at ¶ 95, ¶ 97, ¶ 98) Relialit and Lit Def provided support services to the law firms.[4] (*Id.* at ¶ 94, ¶ 97, ¶ 201) Blust and his companies, including Lit Def, substantially assisted the law firms and Strategic in collecting unlawful advance fees from consumers in exchange for debt-relief services, in violation of the TSR (*Id.* at ¶ 252, ¶ 260)

From January of 2016 through January of 2024, Strategic and the law firms received hundreds of millions of dollars in advance fees from consumers.[5] (*Id.* at ¶ 181) Blust and Ryan Sasson, the owner of Strategic, had an agreement whereby Strategic

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[4] When Strategic received notice from a consumer enrolled in their advance-fee debt-relief operation that they had been sued by a creditor, Strategic did not send the filings to the law firm listed on the consumer's engagement letter. (Dkt. No. 366, ¶ 95) Instead, Strategic forwarded those filings to Lit Def. (*Id.*) Lit Def then reviewed the filings and determined whether and to which contracted litigation or appearance attorney it would send the filings. (*Id.*)

[5] The SAC alleges that, since January of 2016, Strategic and the law firms "have taken at least $100,000,000 in fees from consumers" before any of the consumer's debts were settled or reduced. (Dkt. No. 366, ¶ 181) But the totality of allegations in the SAC suggest that consumers have likely paid *hundreds of millions* in fees to Strategic and the law firms. Well over 100,000 consumers have participated in defendants' debt-relief program. Sample payment data for approximately 34,000 consumers enrolled in the program over an approximately five-year period shows that these 34,000 consumers alone paid a total of $104,000,000 to Strategic and the law firms before any debt-relief payments were made to creditors. (*Id.* at ¶ 147)

received 80% of all fees and the law firms received 20% of all fees. (*Id.* at ¶ 160) In addition, Blust's companies, including Hedgewick, Lit Def, and Relialit, all received significant payments from the law firms. (*Id.* at ¶¶ 208-213) From December 2019 through April 2021 specifically, Lit Def received over $37 million from the law firms. (*Id.* at ¶¶ 208-09) Blust personally received money through his companies, the law firms, and various other entities related to Strategic. (*Id.* at ¶ 83, ¶ 206, ¶ 214)

Jason Blust's family, including Jacklyn Blust, are beneficiaries of the Blust Trust. (*Id.* at ¶ 225) The Blust Trust owns Lit Def. (*Id.* at ¶ 100) Jason Blust funneled advance fee proceeds from Strategic and the law firms into the Blust Trust, through Lit Def. (*Id.* at ¶ 100) For example, from December 2019 through April 2021, law firms controlled by Blust and involved in Strategic's advance-fee debt-relief operation made payments to Lit Def totaling over $37 million. (*Id.* at ¶ 209) In turn, from March 2020 through April 2021, Lit Def paid over $36 million to the Blust Trust. (*Id.* at ¶ 226) Jason Blust also funneled advance fee proceeds from the law firms and Strategic to Jacklyn Blust, through Lit Def and the Blust Trust. (*Id.* at ¶ 101) To that end, between July 2020 and April 2021, the Blust Trust transferred at least $8.3 million to Jacklyn Blust. (*Id.* at ¶ 228)

As a result of these transfers, Jacklyn Blust and the Blust Trust received funds, either directly or indirectly, which were obtained from consumers as result of defendants' TSR violations. (*Id.* at ¶ 205, ¶ 229, ¶¶ 302-06) Jacklyn Blust and the Blust Trust are not bona fide purchasers with legal or equitable title or other legitimate claims to the funds they received. (*Id.*) Thus, the funds received by Jackln Blust and the Blust Trust are

subject to disgorgement.[6] (*Id.* at ¶¶ 302-06)

## LEGAL STANDARD

Federal Rule of Civil Procedure 12(b)(1) requires that a claim be dismissed for lack of subject matter jurisdiction "when the district court lacks the statutory or constitutional power to adjudicate it." *Makarova v. United States*, 201 F.3d 110, 113 (2d Cir. 2000). When analyzing a motion to dismiss pursuant to Rule 12(b)(1), the court "must accept as true all material factual allegations in the complaint," but may not "draw inferences from the complaint favorable to plaintiffs." *J.S. ex rel. N.S. v. Attica Central Schools*, 386 F.3d 107, 110 (2d Cir. 2004). "A plaintiff asserting subject matter jurisdiction has the burden of proving by a preponderance of evidence that it exists." *Makarova v. U.S.*, 201 F.3d at 113. In evaluating a motion to dismiss pursuant to Rule 12(b)(1), courts "may consider affidavits and other materials beyond the pleadings…but….may not rely on conclusory or hearsay statements contained in the affidavits." *Attica Central Schools*, 386 F.3d at 110.

To survive a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), the complaint must contain "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1940 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim has facial plausibility "when the plaintiff pleads factual content that allows the Court to draw the

[6] In the motion for a TRO, plaintiffs requested, *inter alia*, an asset freeze as to certain defendants and relief defendants, including Jacklyn Blust. (Dkt. No. 2) In support of the relief requested as to Jacklyn Blust specifically, plaintiffs relied on the declaration of Tim Hanson. (Dkt. No. 8-7) Hanson's declaration contained statements reflecting allegations in the SAC, including that the law firms paid Lit Def over $30 million; that Lit Def in turn transferred $36 million to the Blust Trust; and that the Blust Trust transferred $8.3 million to Jacklyn Blust. (*Id.* ¶¶ 35-38) As noted *supra*, all of the relief requested in the TRO, including the asset freeze as to Jacklyn Blust, was granted by Judge Vilardo and continued by this Court in the PI. (Dkt. Nos. 12, 184) In its recent decision affirming the PI, the Second Circuit stated that "[o]n the record before us, we affirm both the District Court's asset freeze and the appointment of a receiver." *See Consumer Fin. Prot. Bureau v. Sasson*, 2025 U.S. App. LEXIS 13336, *8. Defense counsel notes that plaintiffs have voluntarily lifted the asset freeze as to Jacklyn Blust. (Dkt. No. 454-1, pg. 3)

reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 129 S. Ct. at 1949. When evaluating a motion to dismiss, a court must accept as true the factual allegations contained in a complaint and draw all inferences in plaintiff's favor. *See Allaire Corp. v. Okumus*, 433 F.3d 248, 249-50 (2d Cir. 2006). "Determining whether a complaint states a plausible claim for relief...requires the...court to draw on its judicial experience and common sense." *Iqbal*, 556 U.S. at 662.

**DISCUSSION**

"District courts have the power to order disgorgement from a relief defendant upon a finding that she (1) is in possession of ill-gotten funds and (2) lacks a legitimate claim to those funds." *Commodity Futures Trading Comm'n v. Walsh,* 618 F.3d 218, 225 (2d Cir. 2010) (accord *SEC v. Cavanagh*, 155 F.3d 129, 135 (2d Cir. 1998)). A relief defendant may be a gratuitous beneficiary of the proceeds from the principal defendant's fraud or merely the custodian of the principal defendant's assets. *See CFTC v Hanover Trading Corp.*, 34 F. Supp. 2d 203, 207 (S.D.N.Y. 1999). It is not necessary to show that the relief defendant was aware that the funds were obtained illegally. *See Walsh*, 618 F.3d at 229. Here, the SAC alleges that Jacklyn Blust ("defendant" or "Mrs. Blust") received ill-gotten gains in the form of proceeds from Strategic's unlawful debt-relief operation, and that she did not have a legitimate claim to those funds. Thus, she meets the minimum standards for a relief defendant at the pleadings stage.

Mrs. Blust argues that she is not a valid relief defendant because (1) she did not receive funds directly from a principal defendant in this action, but instead from another relief defendant; (2) she is no longer in possession of the allegedly ill-gotten funds; and (3) some or all of the claims against her are barred by the statute of limitations. For the

following reasons, the Court rejects these arguments and finds the allegations in the SAC sufficient to state a claim for relief against Mrs. Blust.[7]

*The SAC alleges that Mrs. Blust received ill-gotten gains from a defendant.*

The SAC alleges that defendants Blust and Lit Def substantially assisted the law firms and Strategic in violating the TSR by collecting advance fees from consumers for debt-relief, and that Lit Def received $37 million in proceeds from this unlawful scheme. It is alleged that Lit Def, owned by Blust and the Blust Trust, transferred $36 million of these proceeds to the Blust Trust. It is alleged that the Blust Trust then transferred $8.3 million of these proceeds to Mrs. Blust. Thus, the SAC sufficiently alleges that Mrs. Blust received ill-gotten gains from defendants, namely Blust and Lit Def.

It makes no difference that the funds passed through the hands of another relief defendant, specifically the Blust Trust, before they were transferred to Mrs. Blust. Indeed, courts have rejected a traceability requirement in the context of disgorgement *See SEC v. Rosenthal*, 426 Fed. Appx. 1 (2d Cir. 2011). Thus, plaintiffs are not required to trace specific or comingled funds to their ultimate recipients. *See e.g., SEC v. Banner Fund Int'l*, 211 F.3d 602, 617, 341 U.S. App. D.C. 175 (D.C. Cir. 2000) (reasoning that "disgorgement is an equitable obligation to return a sum equal to the amount wrongfully obtained, rather than a requirement to replevy a specific asset"). Indeed, such a requirement would seem to invite and encourage money laundering. *See Rosenthal*, 426

[7] Mrs. Blust raises the same arguments in support of both her motion to dismiss pursuant to Rule 12(b)(6) (failure to state a claim) and Rule 12(b)(1) (lack of subject matter jurisdiction). To that end, she contends that because the SAC fails to sufficiently state a claim against her as a relief defendant, the Court lacks subject matter jurisdiction over her. *See F.T.C. v. Strano*, 528 F. App'x 47, 50 (2d Cir. 2013) (noting that a court has subject-matter jurisdiction over a non-party if they are properly before the court as a "relief" or "nominal" defendant). Thus, the Court's analysis here jointly addresses both defendant's Rule 12(b)(1) and Rule 12(b)(6) challenges.

Fed. Appx. at 3 ("Imposing such a tracing requirement would allow insider trading defendant to escape disgorgement by…comingling and transferring such profits.").[8]

Even so, the allegations of the SAC, accepted as true, indicate that the $8.3 million transferred to Mrs. Blust was received from, and is traceable to, principal defendants Blust and Lit Def. (*See* Dkt. No. 366, ¶ 101) ("Jason Blust funnels consumer funds from the [the law firms and Strategic] to Relief Defendant Jacklyn Blust via Lit Def and the Blust Family 2019 Irrevocable Trust.") Mrs. Blust does not cite a case which holds that ill-gotten gains cannot be disgorged when a relief defendant receives such funds through another relief defendant, as opposed to directly from the principal defendant who engaged in the wrongdoing. And here, the SAC alleges that the Blust Trust owns Lit Def. Thus, the relief defendant responsible for the transfers and the principal wrongdoer are essentially one in the same. At bottom, Mrs. Blust is alleged to have received illegal proceeds from Strategic's debt-relief operation, absent any legitimate claim or interest in them. While Mrs. Blust remains free to challenge the validity of these assertions as the case unfolds, they are sufficient to state a claim for relief at this early stage of the litigation.[9]

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[8] Mrs. Blust cites *United Stats v. Ahmed*, 72 F.4th 379, 406-07 (2d Cir. 2023), for the proposition that while a district court "is not required to 'trace' ill-gotten gains to specific assets in [a principal defendant's] possession" before disgorging such assets, "equity imposes different rules" as to relief defendants. *Ahmed* dealt with a "nominee" theory of relief-defendant liability, which permits disgorgement "[i]f a relief defendant is deemed a mere nominal owner of an asset that is equitably owned by a primary defendant[.]" *Id.* at 408. The court in *Ahmed* stated that "the nominee doctrine is necessarily an asset-specific inquiry." *Id.* But plaintiffs in this case have not pled a nominee theory of recovery against Mrs. Blust. Thus, *Ahmed* is distinguishable from the facts alleged in this case. Here, plaintiffs are seeking disgorgement not because Mrs. Blust is the nominal owner of an asset that is actually owned by a principal defendant, but because Mrs. Blust received allegedly ill-gotten gains and does not have a legitimate claim to those funds. *See Cavanagh*, 155 F.3d at 136.

[9] Mrs. Blust also argues that the claim against her fails because Lit Def did not collect advance fees from consumers. The SAC alleges that Lit Def substantially assisted the law firms in collecting illegal advance fees from consumers in violation of the TSR, and that some of those proceeds were ultimately received by Mrs. Blust. Lit Def has moved to dismiss the SAC on a number of grounds, including that it did not substantially assist the law firms in the collection of advance fees. This Court has recommended that Lit Def's motion to dismiss be denied, and that recommendation is on appeal with the District Court. As the case proceeds to discovery, or should the claims against Lit Def ultimately be dismissed, Mrs. Blust will have the opportunity to raise this issue again. But for now it is premature.

*Even if Mrs. Blust no longer possesses the ill-gotten gains, she remains a properly-pled relief defendant under the SAC.*

A relief defendant "holds the named defendant's assets only in a subordinate or possessory capacity to which there is no dispute." *F.T.C. v. LeadClick Media, LLC*, 838 F.3d 158, 177 (2d. Cir. 2016). Mrs. Blust argues that because she used all of the monies she received from Lit Def and/or the Blust Trust to pay state and federal taxes, she no longer "holds" the ill-gotten funds in a "possessory capacity," and thus cannot be a relief defendant. *See Walsh*, 618 F.3d at 225 (noting that a relief defendant is an individual or entity "in possession of ill-gotten funds"). Defendant's argument is not supported by prevailing case law.[10]

In *SEC v. Aragon Capital Advisory*, 07 Civ. 919, 2011 U.S. Dist. LEXIS 82531 (S.D.N.Y. July 26, 2011), a relief defendant received ill-gotten gains, transferred the money into a joint bank account with another individual, and then used the funds to make "an all-cash purchase of a New York City condominium." Like Mrs. Blust argues here, the relief defendant in *Aragon* took the position that she was not a proper relief defendant because she did not "currently possess any of the alleged illicit proceeds." *Id.* at *56 (internal citations omitted). The court rejected the argument, holding instead that "an

[10] Mrs. Blust submits a declaration in support of her motion to dismiss. (Dkt. No. 454-3) Therein, she states that she used all of the $8.3 million transferred to her by the Blust Trust for the payment of taxes to the Internal Revenue Service and the State of Illinois. (*Id.* at ¶¶ 3-4) Ms. Blust further declares that she is not currently in possession of any funds from the Blust Trust. (*Id.* at ¶ 6) Plaintiffs argue that the Court should not consider Mrs. Blust's declaration because this is a Rule 12(b)(6) motion and the declaration pertains to matters outside the pleadings. However, Mrs. Blust also moves for dismissal pursuant to Rule 12(b)(1), which does permit the Court to consider documents and other matters outside the complaint. Plaintiffs further point out that the declaration includes no admissible evidence demonstrating that the $8.3 million in question was actually used to pay taxes. The Court agrees with plaintiffs that whether Mrs. Blust still possesses the allegedly ill-gotten gains, as well as whether some or all of this money was used to pay taxes, are questions of fact that are not resolved by Mrs. Blust's declaration. Indeed, Mrs. Blust submits no records, documentation, or exhibits that would seem to verify her claims that the $8.3 million she received from the Blust Trust was used to satisfy tax obligations. But even if the Court were to accept as true that Mrs. Blust used all of the funds in question to pay taxes, it would not matter for all the reasons to be discussed herein.

individual may be a proper relief defendant even if she no longer possesses the ill-gotten gains if she previously received benefits that were derived from another person's unlawful conduct." *Id. See also SEC v. Byers*, 08 Civ. 7104, 2009 U.S. Dist. LEXIS 59689 (S.D.N.U. 2009) (intervenors/relief defendants "received ill-gotten funds" when mortgage payments for a house they purchased under "suspicious circumstances" were drawn from a bank account containing ill-gotten funds); *SEC v. Martino*, 255 F. Supp. 2d 268, 279-80, 288-89 (relief defendants ordered to turn over yacht purchased with defendant's ill-gotten gains and subsequently transferred to them without fair consideration).

Here, like defendants in *Aragon*, *Byers*, and *Martino*, Mrs. Blust received a benefit from the primary defendants' unlawful conduct when she used allegedly ill-gotten gains to satisfy her and/or her husband's state and federal tax obligations.[11] Mrs. Blust argues that this was a "legitimate" use of the money that should somehow make the funds exempt from disgorgement. She likewise contends that because the money has already been spent, and is not tied to a tangible asset like the condominium in *Aragon* or the yacht in *Martino*, it cannot be disgorged. But an individual should not be permitted to use illicit gains, over which they have no legal claim, for any purpose, whether legitimate or not.

Taken to their logical conclusion, Mrs. Blust's arguments would make equitable remedies useless by encouraging individuals to immediately spend down any illicit gains while preserving their lawfully obtained assets. *See Byers*, 2009 U.S. Dist. LEXIS 59689 (defendant should not benefit from the fact that they commingled their illegal profits with other assets); *Rosenthal*, 426 Fed. App'x at 1-2 (defendant not entitled to "escape

[11] In fact, during oral argument, defense counsel acknowledged that Mrs. Blust used the $8.3 million to pay state and federal taxes owed by her husband, defendant Jason Blust. Thus, the funds directly benefitted not only a relief defendant, but also a principal and primary defendant to this lawsuit, who is alleged to have actively and substantially assisted in the TSR violations charged here.

disgorgement by spending down illicit gains while protecting legitimately obtained assets"); *United States CFTC v. EJS Capital Mgmt., LLC*, 14 CV 3107, 2015 U.S. Dist. LEXIS 130971, *16 (S.D.N.Y. Sept. 24, 2015) (rejecting relief defendant's claim that she does not currently possess the ill-gotten gains because "[a]ny funds [relief defendant] used to pay her personal and family expenses from accounts containing both her lawfully acquired funds and [illicit] funds, necessarily reduced the balance of her personal funds first, since she had no interest in, and no right to draw against the illegally gotten [] funds."); *Banner Fund*, 211 F.3d at 617 (To hold…that a court may order a defendant to disgorge only the actual assets unjustly received would lead to absurd results[.] …[F]or example, a defendant who was careful to spend all the proceeds of his fraudulent scheme, while husbanding his other assets, would be immune from an order of disgorgement. [The result] would perpetuate rather than correct an inequity.").

For these reasons, the Court finds that even if Mrs. Blust no longer possesses the allegedly ill-gotten gains, she remains a valid relief defendant at this stage of the lawsuit.

*Mrs. Blust's Statute of Limitations Argument is Premature*.

Although statutes of limitations are ordinarily affirmative defenses, a court may dismiss a complaint for failure to state a claim if the allegations in the complaint, taken as true, show that relief is barred by the applicable statute of limitations. *Jones v. Bock*, 549 U.S. 199, 215, 127 S. Ct. 910 (2007). *See also Conn. Gen. Life Ins. Co. v. BioHealth Laboratories, Inc.*, 988 F.3d 127, 131-32 (2d Cir. 2021) ("[A] statute of limitations defense may be decided on a Rule 12(b)(6) motion" only if the defense appears on the face of the complaint."). Here, no statute of limitations defense appears on the face of SAC.

To be entitled to disgorgement, plaintiffs must establish that the requested relief falls within the applicable statute of limitations for the underlying claim. *Kokesh v. SEC*, 581 U.S. 455, 467 (2017); *SEC v. Cohen*, 332 F. Supp. 3d 575, 591 (E.D.N.Y. 2018). The SAC alleges that the Blust Trust transferred $8.3 million to Mrs. Blust between July 2020 and April 2021. Mrs. Blust contends that since the statute of limitations for plaintiffs' underlying TSR claims is three years, plaintiffs are not entitled to disgorgement of any transactions that occurred in 2020, which is more than three years prior to the filing of the original complaint on January 10, 2024.

TSR violations are subject to the same statute of limitations as allegations of unfair, deceptive, or abusive acts or practices under Section 1031 of the Consumer Financial Protection Act of 2020 ("CFPA"). *See* 15 U.S.C. § 6102(c)(2). The CFPA provides that "no action may be brought under this title more than 3 years *after the date of discovery of the violation* to which an action relates." 12 U.S.C. § 5564(g)(1) (emphasis added); *CFPB v. Manseth*, 22-CV-29, 2023 U.S. Dist. LEXIS 147335 (W.D.N.Y. Aug. 22, 2023). There is no language in the SAC to suggest that plaintiffs discovered, or had reason to discover, Mrs. Blust's receipt of ill-gotten funds more than three years before the filing of the initial complaint. While Mrs. Blust may assert this argument as the case unfolds and discovery reveals further information as to when plaintiffs knew of the improper transfers, the Court cannot conclude from the face of the SAC that the claims for relief against Mrs. Blust are time-barred.

Moreover, defendants Jason Blust and Lit Def are also alleged to have violated Section 63(12) of the New York Executive Law, through their involvement with Strategic's advance-fee debt-relief operation. Disgorgement is an available remedy under the New

York Executive Law. *People v. Greenberg*, 34 N.Y.S.3d 402, 405 (N.Y. Ct. App. 2016). The statute of limitations under Executive Law § 63(12) is six years. *See* N.Y. C.P.L.R. 213(9). The 2020 and 2021 transfers alleged here are plainly within the six year statute of limitations applicable to claims brought pursuant to Executive Law § 63(12).

## CONCLUSION

For the foregoing reasons, it is recommended that relief defendant Jacklyn Blust's motion to dismiss the second amended complaint (Dkt. No. 454) be denied.

Pursuant to 28 U.S.C. §636(b)(1), it is hereby **ORDERED** that this Report and Recommendation be filed with the Clerk of Court.

Unless otherwise ordered by Judge Wolford, any objections to this Report and Recommendation must be filed with the Clerk of Court within fourteen days of service of this Report and Recommendation in accordance with the above statute, Rules 72(b), 6(a), and 6(d) of the Federal Rules of Civil Procedure, and W.D.N.Y. L. R. Civ. P. 72. Any requests for an extension of this deadline must be made to Judge Wolford.

***Failure to file objections, or to request an extension of time to file objections, within fourteen days of service of this Report and Recommendation WAIVES THE RIGHT TO APPEAL THE DISTRICT COURT'S ORDER.*** *See Small v. Sec'y of Health & Human Servs.*, 892 F.2d 15 (2d Cir. 1989).

The District Court will ordinarily refuse to consider *de novo* arguments, case law and/or evidentiary material which could have been, but were not, presented to the Magistrate Judge in the first instance. *See* Paterson–Leitch Co. v. Mass. Mun. Wholesale Elec. Co., 840 F.2d 985, 990-91 (1st Cir. 1988).

*Finally, the parties are reminded that, pursuant to W.D.N.Y. L.R.Civ.P. 72(b), written objections "shall specifically identify the portions of the proposed findings and recommendations to which objection is made and the basis for each objection, and shall be supported by legal authority."* ***Failure to comply with these provisions may result in the District Court's refusal to consider the objection.***

**SO ORDERED.**

Dated: July 30, 2025
Buffalo, New York

MICHAEL J. ROEMER
United States Magistrate Judge